IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Lewis Brisbois Bisgaard and Smith LLP	§	
	§	
v.	§	**4:22-cv-03279**
Michael Joseph Bitgood, et al.	§	

BITGOOD'S RESPONSE TO PLAINTIFF PRO-SE'S MOTION TO REVOKE HIS ECF ACCESS

TO THE HONORABLE JUDGE OF SAID COURT:

I. INTRODUCTION

1. On October 21st 2022, Bitgood requested ECF access under the Americans with disabilities act.[1] **Dockets 29/30**. This request was not contingent on being in Plaintiff pro-se's "good graces" or in having to bow down to Plaintiff pro-se and do as they say.

2. Indeed, and to avoid having to deal with more prevarications from Plaintiff pro-se, Bitgood made his request solely and exclusively under

[1] *42 U.S.C. § 12112(a). Section 12102(2) of the ADA* provides: "The term 'disability' means, with respect to an individual (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." § 12102(2). "

the act, leaving out all the false statements William Helfand made, and was fully prepared to make if the application had been made on conventional grounds.

3. On the date that the Court called the matter for hearing, Plaintiff pro-se was asked to speak up on the request, and was invited to comment. Plaintiff pro-se, (wisely) indicated that he had no comment, and that it would be up to the Court to approve the request. **No written response or verbal objection was made by Plaintiff pro-se.**[2] The Court granted Bitgood's ADA request on November 15th 2022. **Docket # 50.**

4. On January 4th 2023, Plaintiff pro-se, without even attempting to make a showing that Bitgood's application was fraudulent or contained any false statements that would have induced the court to act, moved to revoke Bitgood's ECF access for failing to be nice to Plaintiff pro-se, **and for speaking the absolute truth about Plaintiff pro-se and the facts of this case** in his filings, which of course contradict Plaintiff

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[2] Plaintiff pro-se is a "master" at failing to follow rules, to timely object, and they are the "masters" of attempted "mulligans" and do-overs when they fail to follow the law both here and in State Court.

pro-se's false narrative, false statements, and their attempt to bribe a lawyer in the case, and extort the defendants into agreeing to perpetrate a fraud upon the State Court system.

II. PLAINTIFFS PRO-SE DO NOT KNOW WHAT THEY DOING

5. If the Court harbored any doubt, any doubt whatsoever that Plaintiff pro-se is grossly inept, Plaintiff pro-se's docket 96, removes all doubt, and sheds light on just how vicious Plaintiff pro-se truly is.[3]

6. Assuming arguendo, that Plaintiff pro-se is telling the truth in their docket 96, something that this Court can never take as true when coming from Plaintiff pro-se, their entire arguments, complaints, and recourse to their grievances can be found– and addressed– by simply adhering to the Federal Rules of Civil Procedure. However, and as this record plainly reveals, Plaintiff pro-se does not know how to follow those rules, or even worse, they continues to believe that said rules have no application to them.

7. Plaintiff pro-se's entire complaint in docket # 96, is what the

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[3] You do not suspend the Constitution, and you do not seek to inflict physical pain and hardship on anyone because you do not like what they say.

Federal Rules call: PLEADING ABUSES! Stated differently, Plaintiff pro-se is not claiming that any of Bitgood's filings are false, they are claiming that they do not like the filings–period! This is understood in that Bitgood is not going to lay dormant and allow Plaintiff pro-se to keep lying to the Court.

8. And how does the Court know this? Well, because if Bitgood was launching broadsides, making false statements, unwarranted attacks, or was even remotely wrong, then a law firm that touts itself as being the sixth largest in America, with an army of 1600 lawyers would waste no time in using the tools and weapons found in the rules to curtail, and put an end to what Plaintiff pro-se calls Bitgood's pleading abuses and "garbage"![4] **However, and quite sadly, <u>they do not know what they are doing,</u> and so they lash out by asking the Court to break the very law it was empowered to protect as per congress, (the ADA) and to suspend the United States Constitution.**

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[4] An unhappy Plaintiff pro se uses the term "GARBAGE" to refer to all of this Defendant's pleadings that oppose them. ***See Docket # 96.***

III. THE SOLE, EXCLUSIVE, AND PROPER REMEDY

9. The following has to be a profound embarrassment to anyone who calls themself a lawyer, and especially a lawyer admitted to practice before this Court. And even worse, it has to be the ignorant layman that has to teach it to the lawyers.[5]

10. If Plaintiff pro-se's grievances found at docket 96 are true, which of course they are not, then the proper way to address those complaints is to file a motion using Rule 11 of Federal Rules of Civil Procedure and set forth what the pleading abuses are, and what the false statements are.

11. Indeed, this is nothing new, and in the 5th Circuit's landmark opinion of *Thomas v. Capital Sec. Services, Inc.* 836 F.2d 866 (5th Cir. 1988)(en banc), (17-0), the 5th Circuit made clear that there are no more free rides, or passes, for pleading abuses such as the ones contained in Plaintiff pro-se's docket 96, which pleading itself, is a violation of Rule 11 itself in that it asks the Court to (a), break the law, and (b), to

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[5] "Perhaps the problem lies in Bitgood's **ignorance** of what constitutes a legitimate pleading, but that is not an excuse for such clearly inappropriate conduct." (Plaintiff pro-se at docket 96.)

abandon it's role as the neutral arbiter of this case by asking the Court to tell these grossly inept Plaintiffs pro-se, how to practice law, what to file, when to file it, to advise them on legal doctrines, and to advise them on the legal applicability of the law to this case. [6]

12. Indeed, annexed hereto as exhibit "A-1" is the series of e-mails sent by Plaintiff pro-se to the Court asking the Court what to file, when to file it, what to respond to, how to respond, and requesting that the Court advise them on what the law is. **This is breathtaking and astounding to say the least.** In addition, the emails sent to the Court always manufacture some non-exist crisis, emergency, and request immediate attention by the Court.

13. If plaintiff pro se believes that there have been pleading abuses by Bitgood, the remedy is a clear one, file your motion under Rule 11, and as the Honorable Alvin Rubin of the 5th Circuit once penned about Bitgood–

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[6] "And the words "shall impose" in the last sentence focus the court's attention on the need to impose sanctions for pleading and motion abuses. The court, however, retains the necessary flexibility to deal appropriately with violations of the rule. It has discretion to tailor sanctions to the particular facts of the case, with which it should be well acquainted." *(Thomas v. Capital supra).*

(give him an invitation to "put up") before you tell him to "shut up"!

14. The fact that this ignorant layman has to continue teaching these inept lawyers, bears witness to just how bad, and how in bad faith they litigate without the least bit of fear or concern over the Federal Rules and it's consequences; the federal statutes that control this issue; and, the United States Court of Appeals for the 5th Circuit already passing on this very request, when Plaintiff pro-se took this exact identical complaint that they makes in docket 96 to the 5th Circuit, and the 5th Circuit DENIED IT, on January 5th 2023. See: Exhibit "B-2", the order of the 5th Circuit granting ecf access to Bitgood after hearing the same harangue Plaintiff pro-se makes here.[7]

15. Plaintiff pro-se **had a duty to tell this Court** about this ruling, but alas, if the Court is waiting on Plaintiff pro-se to be honest in this case, this Court's good nature, and gentle spirit of equity, will continue to be slapped, and get slapped until such time it is brought to a halt, which is coming soon, for unlike Plaintiff pro-se, Bitgood does know how to

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[7] It is clear that Plaintiff pro-se is out to embarrass the Court by having a district Court overrule the 5th Circuit on the very same issue that the 5th Circuit has already ruled on.

address Plaintiff pro-se's flagrant pleading abuses.[8]

IV. CONCLUSION

16. The ADA, signed into law by President Bush in 1990, sought to secure and bring about dignity for those who like defendant Bitgood suffer from serious disabilities. It was not then, nor is it now, a bargaining chip to be granted in return for pleasing unhappy miscreants who have a problem with the truth– and telling the truth. And, it is not to be used to punish the disabled every time that some disgruntled lawyer or litigant is called out for what they are doing, saying, or for being shown how inept they truly are.

17. To be sure, Bitgood is not asking for any FREE RIDE. If what Plaintiff pro-se alleges in his docket 96 is true, and rises to the level of pleading abuses, then the Court should not hesitate to punish Bitgood for the abuses with the following caveat that also comes from the 5th Circuit– ***"that sword, Rule 11, cuts both ways"!***

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[8] A failure to speak and to disclose is considered to be lying. Indeed, in Hennigan vs. Harris County, Texas, 593 S.W.2d. 380 (Tex. App. [10th Dist.] 1979) (writ ref'd. n.r.e.), the court stated: "Where there is a duty to speak, silence may be as misleading as a positive misrepresentation of existing facts." Hennigan at 384.

18. However, inflicting physical pain, discomfort, and placing the defendant at great peril to be severely injured, is not a remedy, it is purposeful discrimination that violates not only Rule 11, but the ADA itself, and is a highly illegal request to be made in the very forum that Congress granted this Court, the powers to make sure that what Plaintiff pro-se is asking for, **never comes to pass.** Their motion is frivolous, vindictive, petty and abusive, and should be denied. [9]

Respectfully Submitted,
/s/Michael Joseph Bitgood
a/k/a/ Michael Easton
503 FM 359, Suite 130-216
Richmond, Texas 77406
281-415-8655
EastProLaw@msn.com

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[9] In case the Court missed it, this is what Plaintiff pro-se really wants as seen in docket 96. *"[t] he answer is to put Bitgood back in the position most pro se litigants are in:* ***someone must determine*** *whether what Bitgood wishes to put in the public record* ***actually belongs there***." CODE: (Be our lawyer again Judge)–and, this one from docket 96. *"[r]evoke Bitgood's ECF access and* ***force Bitgood*** *to deliver, or have delivered to the Clerk, any pleading Bitgood may wish, to allow the Clerk and the Court the appropriate* ***prior review****..."* CODE: (Censor him Judge, stop him from telling the world about Lewis Brisbois Judge, in fact, allow us to review his filings, then we will send you another e-mail telling you if we are OK with it.)

CERTIFICATE OF SERVICE

On this the 24th day of January, 2023, I certify that service was accomplished on all parties by ecf.

/s/ Michael Joseph Bitgood